

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90014

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: AUGUST 7, 2008

On June 12, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The complainant alleges that the judge engaged in misconduct while presiding over the complainant's civil proceeding.

The complainant submits the complaint form and copies of miscellaneous documentation in support of his complaint. These include correspondence to the district court clerk, the chief district judge, and other public officials (ie., the Commissioner of Education, and the Social Security Administration), correspondence from private parties to the complainant, and several motions and a court order issued in the case. Based upon these materials, it appears that the complainant contends that the judge wrongfully denied the complainant in forma pauperis (IFP) status and dismissed his lawsuit. The complainant states that his epilepsy and other disabilities entitled him to IFP status and that he had complied with the judge's request to type the civil complaint and submit supporting documentation. The complainant states that the judge "doesn't want to carry out the law due his use of illicit drugs," and asks for another judge to hear his case.

As an initial matter, the judicial misconduct complaint statute does not authorize the removal of the presiding judge from a case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rules 11, 19, and 20.

A review of the case docket, relevant pleadings and court orders indicates that the complainant filed a letter and a motion to proceed IFP in January 2007. The judge promptly issued a memorandum and order describing the complainant's history of frivolous litigation against the same defendant sued in the pending matter. The court further explained that the complainant was an enjoined litigant who had been warned on multiple occasions not to instigate any further proceedings against this defendant. As a result, the court found the complainant's filings of January 2007 to be in clear violation of the orders issued in a previous case, denied the complainant's IFP motion, and warned that further such filings would precipitate monetary sanctions and a contempt proceeding.¹

Despite the court's order, in early 2008, the complainant filed a motion to institute a lawsuit, followed by another IFP motion, and a letter to the chief district judge. The presiding judge issued a memorandum and order observing that these submissions appeared to assert undefined financial claims, as well as precluded claims against the same defendant. As the judge determined that the materials did "not present a basis upon which [the] Court could find any cognizable claims over which [it] has subject matter jurisdiction," he denied the complainant's motions. The complainant, thereafter, filed two further motions that the court also denied.

The judicial misconduct complaint is baseless. There is no information in the misconduct

¹Court records indicate that the complainant has filed 15 cases since 1988, four of which were heard by the judge charged in the present matter.

complaint, its attachments, or in the reviewed records from either of the two relevant cases suggesting that the judge harbored any improper motive, violated the law, or used illicit drugs. To the contrary, the court's orders demonstrate that the judge sought to impose the "least punitive measure[s] necessary" to limit the complainant's repetitive filings while continuing to review the complainant's submissions in order to determine whether there were any reasonable grounds to allow the claims to proceed. Further, the court chose not to exercise its discretion to impose sanctions upon the complainant. As the reviewed record is devoid of any facts in support of the allegations, the complaint is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Absent evidence of bias or improper motive--of which there is none-- the complainant's disagreement with any of the court's rulings (including the dismissal of the case(s) and the denial of the IFP motion(s)) does not present a cognizable basis for a misconduct complaint. Accordingly, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90014 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

8/7/08

Date

Sandra L. Lynch

Chief Judge Lynch